In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.1379 of 2006

.....

Date of decision: 22.2.2007

Dr. Gurcharan Singh

.....Petitioner

v.

Punjabi University, Patiala and others

.....Respondents

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Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Rajiv Atma Ram, Senior Advocate with Mr. Sunil K. Nehra, Advocate for the petitioner.

Mr. Deepak Sibal, Advocate for respondents No.1 and 2.

None for respondent No.3.

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S.S. Saron, J.

The petitioner by way of the present petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 5.11.2003 (Annexure-P.15) issued by respondent No.1-Punjabi University, Patiala whereby his retirement dues are not being settled on account of the fact that he directly corresponded with one M/s Construct Data Verlag Gmbh Ortsstrasse 54 A-2331, Vosendorf, Austria to include the name of the Punjabi University, Patiala in its `Fair Guide'. The petitioner also seeks the quashing of the order dated 5.10.2005 (Annexure-P.20) declining to convert his

premature/voluntary retirement into long leave without pay and also declining the ex-post facto approval regarding sending order to M/s Construct Data Publisher, Austria for `Fair-Guide' without seeking prior consent.

The petitioner, while he was working as Punjabi Professor at the Punjabi University, Patiala (respondent No.1) applied for appointment as Professor in Punjabi in Delhi University (respondent No.3). The age of retirement in Delhi University was 62 years whereas it was 60 years in Punjabi University. For the purpose of being relieved from Punjabi University, the petitioner initially gave three months advance notice on 1.1.2003 (Annexure-P.1). On coming to know that he has been appointed he submitted another letter dated 3.3.2003 (Annexure-P.2) for relieving him. However, on being informed by the officials of the Punjabi University that he could not be relieved, he sought premature retirement and was given a relieving certificate. The petitioner prays for cancellation of the order of premature voluntary retirement and instead he be relieved on account of his appointment as Punjabi Professor in Delhi University.

Written statement has been filed on behalf of respondents No.1 and 2 in which it is stated that the petitioner had sought premature retirement and his request was accepted. He was voluntarily retired w.e.f. 31.3.2003. Thereafter, he joined as Professor in Delhi University. It is then that he came to know that since he had got voluntary retirement from Punjabi University, his pay would not be protected. Therefore, he started representing to the Punjabi University seeking cancellation of his order of voluntary retirement. Besides, it is submitted that there is no provision in

the rules for transfer of the retiral benefits of the petitioner to the Delhi University. It is also submitted that the petitioner had placed orders with a foreign company on his own without any sanction or knowledge of the competent authority. The foreign company was now raising bills directly to the University for which the petitioner alone is to be blamed. The bills/accounts are liable to be settled by the petitioner as the Punjabi University authorities were not involved in the placement of such orders. It is stated that the allegations regarding the wrong advice said to have been given by the officials of the Punjabi University regarding his being relieved only on submitting request for premature retirement, are vague and are denied. It is prayed that the writ petition be dismissed.

The petitioner filed replication whereby the submissions made in the petition are reiterated. It is submitted that the request for premature retirement was made by the petitioner as a last resort in utter frustration as there was inaction on the part of the Punjabi University. It is denied that there is no provision in the rules and regulations by which the retiral benefits of the petitioner cannot be transferred to the Delhi University. A reference is made to the instructions (Annexure-P.22) regarding transfer of personnel between the Central Government/Autonomous Bodies and State Governments/Autonomous Bodies and vice-versa. As regards the placing of order for inclusion of the name of the Punjabi University in the `Fair-Guide' of the foreign company, it is submitted that the petitioner has not placed any such order. The documents for publishing the name of Punjabi University in the said guide had been placed before the petitioner by his Personal Assistant and as Director, Planning and Monitoring the petitioner

also put his signatures on the proforma. All the correspondence which comes to the office of the petitioner was marked either from the office of the Vice-Chancellor or from the Registrar. The petitioner, it is submitted, approved the proforma but did not send any material. No material was sent by the petitioner in his personal capacity or for his personal gains. The petitioner is not liable to make any payment with regard to the order said to have been placed by the petitioner for publication of the name of the Punjabi University with the foreign company.

The learned senior counsel appearing for the petitioner has contended that the retiral benefits of the petitioner are liable to be transferred by the Punjabi University to the Delhi University and on account of a technical default of the petitioner submitting his request for voluntary retirement he is not liable to be penalized. In fact, it was never the intention of the petitioner to seek voluntary retirement and he had only wanted to be relieved in accordance with the rules so that he could get the necessary benefits of service in the Delhi University where he was selected and appointed.

Learned counsel for the respondent-Punjabi University, however, has submitted that the petitioner had in fact sought voluntary retirement and, therefore, at this stage the order seeking voluntary retirement cannot be withdrawn and substituted by an order of continuity in service.

We have given our thoughtful consideration to the matter. The petitioner joined the Punjabi University, Patiala (respondent No.1) as an Associate Director on 3.8.1976. Thereafter, he was appointed to the post of

Reader in the Department of Punjabi. On 1.1.1985, he was promoted to the post of Professor in respondent No.1-Punjabi University. The petitioner in this manner served the Punjabi University, Patiala (respondent No.1) for almost 26 years and 11 months. Had he continued in service of the Punjabi University he would have retired at the age of 60 years on 29.2.2004. However, the petitioner during his service applied for appointment as Professor of Punjabi in the University of Delhi (respondent No.3) as the retirement age in Delhi University was 62 years. The petitioner was selected and appointed as Professor in the Department of Punjabi in Delhi University vide appointment letter dated 13.2.2003. Earlier to his appointment, the petitioner by a letter dated 1.1.2003 (Annexure-P.1), gave three months' advance notice informing the Vice-Chancellor (respondent No.2) of Punjabi University that he had been selected as Professor of Punjabi at the Delhi University. Accordingly, he was submitting three months' advance notice so that there may not be any hindrance regarding necessary action. In case he had to join his duties earlier then relaxation for the remaining period may be given to him. This was followed by a letter dated 3.3.2003 (Annexure-P.2) to the office of Director, Planning and Monitoring Punjabi University, Patiala. It was informed by the petitioner that he had received letter of appointment as Professor in the Department of Punjabi in Delhi University. He had already given three months' advance notice for getting himself relieved from service. Duration of the notice period would be over on 31.3.2003. He would get himself relieved from service of Punjabi University, Patiala w.e.f. 1.4.2003 (afternoon) and shall be submitting his joining report at Delhi University on 2.4.2003 at 9.00 a.m.

Accordingly, it was requested to relieve him from the University service on the above mentioned date i.e. 1.4.2003 and his pensionary benefits of service of 26 years and 9 months be sent in the name of Registrar, University of Delhi by a bank draft. The proforma of continuity of service was enclosed with the letter duly filled-in by the University office along with the relieving certificate. The Punjabi University, Patiala did not take any action on the letters (Annexures-P.1 and P.2) submitted by the petitioner. On visiting the Establishment Branch of the University, the petitioner was informed that his service benefits could only be transferred to the Delhi University (respondent No.3) if he sought voluntary retirement from service. The petitioner resisted this course of action as he had been selected through proper channel. He also informed the Punjabi University that if he seeks retirement his basic pay would not be protected. The authorities of the Punjabi University lingered over the matter and insisted that the petitioner should seek premature retirement. Even upto 31.3.2003 nothing was done even though the petitioner was to join Delhi University by 2.4.2003. In utter frustration and left with no option the petitioner submitted a letter dated 31.3.2003 (Annexure-P.3) seeking premature retirement w.e.f. 1.4.2003 (afternoon). It was also prayed that all his service benefits may be transferred in the name of the Registrar, Delhi University and he may be given relieving certificate. The Punjabi University by a letter dated 1.4.2003 (Annexure-P.4) issued a relieving certificate relieving the petitioner from Punjabi University w.e.f. 31.3.2003 after seeking voluntary retirement from service to enable him to join as Professor in the Department of Punjabi at Delhi University. An office order dated 2.4.2003 (Annexure-

P.5) was also issued to the effect that the Vice-Chancellor had given approval of voluntary retirement of the petitioner w.e.f. 31.3.2003 (Afternoon). The petitioner in fact had desired to be relieved on 1.4.2003 in the afternoon so that he could join Delhi University on 2.4.2003 without a break in his service. In any case, the petitioner had to immediately rush to Delhi University the same day and join. After the petitioner had joined at Delhi University, he submitted a representation dated 25.4.2003 (Annexure-P.6) recounting the circumstances in which he was relieved. It was submitted that he was in fact liable to be relieved from service of the Punjabi University. The order regarding his premature retirement it was prayed may be cancelled. Besides, he may be given extra-ordinary leave without pay till the date of his retirement from Punjabi University with a provision of keeping his lien for the same period in the University so that his last basic pay could be protected in Delhi University. This was followed by another representation dated 6.5.2003 (Annexure-P.7). The petitioner vide letter dated 9.5.2003 (Annexure-P.8) also requested for payment of leave encashment. The Syndicate of the Punjabi University vide Clause 24.17 in its meeting held on 21.6.2003 (Annexure-P.9) recorded that the Vice-Chancellor (respondent No.2) had given his approval for premature retirement of the petitioner w.e.f. 31.3.2003. Besides, the petitioner had requested that all his pensionary benefits of service be sent to the Registrar, Delhi University along with duly filled-in proforma of continuity of service and relieving certificate. The petitioner thereafter submitted another representation dated 3.7.2003 (Annexure-P.10) to the effect that not only the properly filled proforma of continuity of service should be sent to the Delhi

University but the pensionary dues of his University service should also be transferred as a one time pro rata payment to the Registrar, Delhi University. Another request vide letter dated 22.9.2003 (Annexure-P.13) was submitted by the petitioner to the Vice-Chancellor (respondent No.2) of Punjabi University that his letter of three months' notice dated 1.1.2003 (Annexure-P.1) may be treated as technical resignation and he may be permitted to withdraw his request of premature retirement from service of the University. The Punjabi University did not respond to the request made by the petitioner. Rather, by letter dated 5.11.2003 (Annexure-P.15) the petitioner was informed that the Vice-Chancellor had issued instructions that since the petitioner had directly placed an order with one M/s Construct Data in Austria to include the name of the University in the `Fair Guide' without seeking approval of the higher authorities it was ordered that the petitioner should settle the case of payment of bill directly with the said firm and he would not get his retirement dues till he settles this case. The petitioner submitted his representation dated 2.8.2004 (Annexure-P.16) in respect of the communication of the Punjabi University dated 5.11.2003 (Annexure-P.15). The Punjabi University, however, again issued a letter dated 17.8.2004 (Annexure-P.17) informing the petitioner that it had nothing to do with the order placed by the petitioner in his personal capacity with M/s Construct Data Publisher, Austria. It was submitted that the balance payment would be released to the petitioner after he makes full and final payment to the company. This was followed by another letter dated 2.2.2005 (Annexure-P.18) whereby the petitioner was informed that after full and final settlement of accounts with the foreign company information

be sent to the Punjabi University. The petitioner, however, vide letter dated 19.5.2005 (Annexure-P.19) requested to send him a certificate to the effect that he had not availed the benefit of advance increments on account of acquiring Ph.D. degree during his service in Punjabi University, Patiala. The petitioner thereafter vide impugned order dated 5.10.2005 (Annexure-P.20) was informed that as per orders of the Vice-Chancellor (respondent No.2) and as per rules his premature voluntary retirement cannot be converted into long leave without pay and neither ex-post facto approval could be given to him regarding sending order to M/s Construct Data Publisher, Verlag A.G. for `Fair-Guide' without seeking prior consent. As such, it was not possible to make balance payment to him till the accounts were finally settled by him with the foreign company. The petitioner submitted another representation dated 30.5.2005 (Annexure-P.21) again raising his claim. It was submitted that in case the Punjabi University is to transfer the capitalized value of the petitioner's pension and gratuity to the Delhi University then not only will the petitioner be entitled to pension from the Delhi University but will also get the benefit of service rendered by him in Delhi University towards pension after it is clubbed with the service rendered by him with the Punjabi University.

Having considered the matter, we are of the view that the real intention of the petitioner was to have continuity of service while joining as Professor of Punjabi at the Delhi University where the age of retirement was 62 years whereas in the Punjabi University, it was 60 years. The petitioner, at the very first instance, vide his letter dated 1.1.2003 (Annexure-P.1), had sought a letter of his being relieved from the Punjabi

University. The same is the position in the second letter dated 3.3.2003 (Annexure-P.2) where the petitioner submitted the proforma of continuity of service duly filled-in by the University office along with the relieving certificate and prayed that the same be issued along with the relieving certificate. It is only when there was inaction on the part of the Punjabi University that the petitioner on 31.3.2003 (Annexure-P.3) sought premature retirement. However, even while seeking premature retirement, he sought the transfer of all his service benefits in favour of the Registrar, University of Delhi. The Punjabi University issued the relieving certificate dated 1.4.2003 (Annexure-P.4) in respect of the petitioner by indicating that he was being relieved w.e.f. 31.3.2003 after seeking voluntary retirement from service of the Punjabi University to enable him to join as Professor in the Department of Punjabi, University of Delhi at Delhi. Therefore, from the documents and material that have been placed on record, it is evident that it was the clear intention of the petitioner to get himself relieved from the Punjabi University so as to join the Delhi University with continuity of service so as to get all the necessary benefits of continuous service. The Punjabi University in fact was also apprised of and had issued the relieving certificate dated 1.4.2003 (Annexure-P.4) so as to enable the petitioner to join the Delhi University as Punjabi Professor. A perusal of Clause 24.17 of the proceedings of the Syndicate of the Punjabi University dated 21.6.2003 (Annexure-P.9) also shows that the petitioner had informed through his letter that he had been appointed as Professor in the Department of Punjabi, Delhi University and in this context, he gave a notice of three months dated 1.1.2003 (Annexure-P.1) for getting himself relieved. The petitioner had

been relieved after giving him premature retirement on his request. It is also recorded that the petitioner had requested that all the payments of pensionary benefits in lieu of his service may be sent in the name of Registrar, Delhi University in the duly filled-in proforma of continuity of service along with a relieving certificate. As per the orders of the Vice-Chancellor of the Punjabi University, while giving him voluntary retirement w.e.f. 31.3.2003 (AN), he was given the relieving certificate. The petitioner, however, had merely used the term - `premature retirement' so as to get the relieving certificate. He did not know the consequences of using this term. In fact, the real intent was to get himself relieved and have the benefit of continuity of service. The petitioner having served as Professor in the Punjabi University for more than 26 years and only for the purpose of getting further employment by two years had applied for the post of Professor in Punjabi at the Delhi University where he was selected and appointed. Despite persistent queries made to the learned counsel appearing for the Punjabi University as to what prejudice could be caused in case the petitioner had been given the necessary relieving certificate so as to enable him to join at Delhi University, he merely stated that it would set a bad precedent that after an employee on his own had sought voluntary retirement, he would seek the conversion of an order of voluntary premature retirement into that of merely being relieved from service. The Punjabi University in fact has inter-mingled the case of grant of necessary relieving certificate with that of an order placed by the petitioner to include the name of the Punjabi University in the `Fair-Guide' of M/s Construct Data Verlag, Austria which, it is stated, was dealt with by the petitioner without approval

of the higher authorities. The same, in fact, is an independent matter and was not an issue when the petitioner had sought a certificate regarding his being relieved vide letter dated 1.1.2003 (Annexure-P.1) followed by the letter dated 3.3.2003 (Annexure- P.2). From the facts and circumstances of the case and the material placed on record, we are satisfied that the real intent of the petitioner was to get himself relieved so as to join service at the Delhi University and if a relieving certificate had been issued by the Punjabi University, it would not have caused any prejudice to it. This is more so for the reason that the Punjabi University has not shown any statutory rules or regulations which would dis-entitle a University Professor for being appointed from one University to another without break in his service. The petitioner in fact has placed on record instructions (Annexure-P.22) issued by the Government of India, Department of Pension and Pension Welfare regarding transfer of personnel between Central Government/Autonomous Bodies and State Governments and vice-versa. It is inter alia provided that there are instructions which provide for counting of service towards pension on transfer of an employee from the Central Government to Central Autonomous Body having a pension scheme of its own. The same procedure applies in case of employees of the autonomous bodies who are permanently absorbed under the Central Government. Certain employees of the State Governments and State Autonomous Bodies who joined the Central Autonomous Bodies/Statutory Bodies had represented that their service under the State Government/State Autonomous body may be allowed to be counted towards pension under the Central Autonomous body where they were working. It is further recorded that certain Central

Government servants and employees of Central Autonomous Bodies/Statutory Bodies who had joined Autonomous Bodies/Statutory Bodies (excluding Public Undertakings) of the State Governments may be desirous of getting the benefit of counting of service under the Central Government/Autonomous Bodies towards pension in the organizations where they were presently working. In the circumstances, it was felt that reciprocal arrangements may be entered into with the various State Governments to the effect that where employees of the State Governments/State Autonomous Bodies/Statutory Bodies, have been absorbed in the Central Bodies they may be allowed the same benefits as have been extended to the Central Government servants and vice-versa. It is further recorded in the said instructions as follows:-

> "3. The question of extension of various benefits like counting of service, etc., in the cases if (i) employes of the Central Government absorbed in State Autonomous Bodies, and (ii) employees of central Autonomous Bodies absorbed in State Governments and State Autonomous Bodies, and vice versa, has been considered in consultation with the State Governments. After careful consideration, the President has now been pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel and Administrative Reforms, O.M. No.28/10/84-Pension Unit, dated 29.8.1984 [vide Order 6(i) above]. The cases of Central Government servants appointed in State Governments and vice versa will continue to be decided a

hitherto.

4. Similar orders regarding counting of service of the Central Government employees in the event of their absorption in the State Autonomous Bodies and employees of the Central Autonomous Bodies in the State Government, and State Autonomous Bodies, as well as orders regarding acceptance of pension liability, etc., in respect of State Government and State Autonomous Bodies' employees absorbed in Central Autonomous Bodies and employees of State Autonomous Bodies absorbed in Central Government will be issued by the respective State Government.

5. These orders shall apply to employees of the State Government and State Autonomous Bodies moving to Central Government, Central Government Autonomous Bodies.

6. These orders will apply to the employees of the Central Government moving to State Autonomous Bodies and employees of Central Autonomous Bodies to the State Governments and their Autonomous Bodies mentioned in Para 5 above and vice versa who are in service on the date of issue of these orders, irrespective of the date of their absorption."

The memo dated 29.8.1984 referred to above has been placed on record as Annexure-P.23 which deals with the case of transfer of Central Government servants to Central Autonomous Bodies and vice-versa and employees of Central Autonomous Bodies to another Central Autonomous Bodies. The procedure would apply in view of the instructions (Annexure-

P.22). In any case, the pensionary benefits for the service rendered by the petitioner with the Delhi University is to be given by it after counting the service rendered by the petitioner with the Punjabi University. The Delhi University does not appear to have any objection to the grant of said benefit. However, the Punjabi University is objecting to the same primarily on the ground that it would set a bad precedent. In fact, the petitioner has also only sought the service benefits for the period of service rendered by him with the Punjabi University to the extent of about 26 years and 11 months be transferred in the name of the Registrar, Delhi University. This also would show that no extra benefit is being taken by the petitioner from the Punjabi University. Therefore, no prejudice of any kind is being caused to the Punjabi University.

The matter of placing orders without prior consent for inclusion of the name of the University in the `Fair-Guide' of a foreign company, in the circumstances, is to be dealt with separately by the University and in case the petitioner is liable for the same, appropriate action in that regard in accordance with law may be taken. The same, however, has nothing to do with his being relieved otherwise than on voluntary premature retirement.

In the circumstances, the action of the respondent-Punjabi University in prematurely retiring the petitioner and then issuing the relieving order to enable him to join at Delhi University, is liable to be invalidated and the premature voluntary retirement is liable to be converted into the kind of leave due without pay in accordance with the rules and regulations of the respondent-Punjabi University. However, the question of the liability, if any, of the petitioner being responsible for placing the orders

with the foreign company for including the name of the University in the `Fair-Guide', is left open to be considered by the Punjabi University, in accordance with law.

For the foregoing reasons, this petition is allowed by holding that the action of the respondent-Punjabi University in declining to convert his voluntary premature retirement into long leave without pay is quashed and the respondent-Punjabi University shall issue the necessary relieving certificate to the petitioner so as to enable him to join as Professor in Punjabi at Delhi University, Delhi with continuity of service. However, the question regarding the liability or the responsibility, if any, of the petitioner with regard to including the name of the University in the `Fair-Guide' of the foreign company is left open.

In the circumstances of the case, there shall be no order as to costs.

(S.S. Nijjar)
Judge

February 22, 2007. **(S.S. Saron)**
Judge

hsp

NOTE: Whether to be referred to the Reporter or not:Yes